

## Executive Director's Note



### **Executive Director's Note MUR-16-004, 005**

Clean Elections enforcement matters are almost always contentious in one way or another. For example, in 2014, two respondents, Tom Horne, and the Legacy Foundation Action Fund, filed lawsuits to prevent the Commission from even reviewing or investigating the substance of a complaint. Both efforts were unsuccessful.

2016 raised a different and, during my tenure, new approach—the politicization of enforcement even before the matter came before the Commission. Specifically, the Arizona Free Enterprise Club put out a press release about these Complaints declaring that Clean Elections funds are “being used to fund political parties” and alleging “[i]t is not clear whether any strings were attached to the contributions to the party, but it is probably safe to assume that the contributions were a ‘thank you’ for assistance provided in qualifying for the funding.” See <https://www.azfree.org/clean-elections-system-being-used-to-fund-state-democratic-party/> Free Enterprise then called, as it has before, for the Clean Elections Act to be repealed. *Id.* The Free Enterprise Club is a long time opponent of the existence of Clean Elections. Its Political Action Committee was the lead plaintiff in the lawsuit that ended matching funds, and its current President Scot Mussi has been the driving force behind repeal efforts as well as other campaign finance deregulation measures during my entire tenure as Executive Director. See, e.g., Evan Wyloge, Arizona Center For Investigative Reporting, “Dark money group leads last-minute effort to speed up campaign finance changes”, available at [http://www.eacourier.com/copper\\_era/news/dark-money-group-leads-last-minute-effort-to-speed-up/article\\_4594b654-2220-11e6-bb0c-4f28fd918230.html](http://www.eacourier.com/copper_era/news/dark-money-group-leads-last-minute-effort-to-speed-up/article_4594b654-2220-11e6-bb0c-4f28fd918230.html). The Commission received no request from Free Enterprise for the responses filed by candidates.

Underlining the politicization of these proceedings, Complainant Constantin Querard’s November 14 Supplement repeats the fact-free allegations of the Free Enterprise Club’s November 3 release.

**Free Enterprise:** “Don’t be surprised to see this abusive practice explode in the future. If both political parties know that they can grow their bottom line



using the Clean Elections system, they will work to run publicly funded candidates in every race—especially in noncompetitive state House and Senate races where they can siphon off the Clean Election funds to be used elsewhere.” November 3, 2016.

**Querard:** “At the end of the day it is quite possible the Clean Elections Commission will determine that campaigns may simply pay to the parties any amount for “consulting” and that there is no oversight required. So the 2018 cycle may see scores of Clean Elections candidates transfer the majority of their Clean Elections money to the parties.” November 11, 2016.

In order to explore these allegations, the Commission Staff undertook pre-reason-to-believe measures more extensive than I have ever seen in my 6-plus years as the Commission’s attorney and executive director. These included demanding justification of specific campaign expenditures, including by sworn statement and adding additional audits of transactions subject to the Complaint to those candidates selected for random primary audits.<sup>1</sup> Despite this aggressive approach, the staff did not uncover evidence to support the Complaint under the Act and Rules of the Commission. Therefore I recommend that there is no reason to believe a violation occurred based on the Complaints in these matters.

Notably, Free Enterprise failed to acknowledge the Commission specifically demanded evidence of direct campaign expenditures from some 8 Democratic Candidates and subjected transactions with the party to audits where possible.

To see how quickly such theorizing and politicization can become problematic consider the following: Participating Candidate Al Melvin, a Republican who lost in the GOP Corporation Commission primary spent some \$64,688.82, or half of his Clean Money, on one consultant, Grassroots Partners LLC, Mr. Querard’s company. This included a \$46,750.00 cash payment for a radio online advertising buy, and a payment on 8/3/2016 of \$1,722.20 in cash for “consulting and autodialer.” It’s not clear from the report if the consulting fee was for a single day’s services or not. Likewise, it is not clear if the cost of

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<sup>1</sup> General election audits are still outstanding.

